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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-201554

**DATE:** October 8, 1981

**MATTER OF:** Harry G. Bayne - Claim for Actual  
Subsistence Expense

**DIGEST:** Employee on temporary duty assignment questions agency's authority to issue guidelines limiting reimbursement for meals and miscellaneous expenses to 46 percent of the maximum rate for actual subsistence expenses when traveler incurs no lodging expenses. Agency may issue guideline alerting employees that the maximum amount considered reasonable under ordinary circumstances is 46 percent of the statutory maximum, but it should also provide that amounts in excess of 46 percent may be paid if adequate justification based on unusual circumstances is submitted.

The issue in this case is whether an agency has the authority, by written memorandum, to limit reimbursement of the cost of meals to 46 percent of the maximum rate for actual subsistence expenses when a traveler on a temporary duty assignment incurs no lodging expenses.

This request for a decision was filed by Jefferson Wyatt, Jr., Certifying Officer and Chief, Financial Management Branch, Department of Energy (DOE), Dallas, Texas. It concerns the claim of Harry G. Bayne, Chief Counsel, Crude Production Audit Division, Office of Special Counsel, DOE.

Mr. Bayne traveled from Dallas, Texas, to Houston, Texas, to perform temporary duty for the period August 13-15, 1980. He stayed with friends and so incurred no lodging expenses. With regard to meals, he submitted a voucher claiming \$27.95 for August 13, \$33 for August 14, and \$37.70 for August 15, for a total of \$98.65.

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The agency disallowed \$29.65, based upon its subsistence allowance policy as evidenced by a memorandum to all employees from the Director, Management and Support, dated March 27, 1980. That memorandum reads as follows:

"Occasionally employees stay with friends or relatives during their temporary duty assignments. In such cases reimbursement for food and miscellaneous expenses will be limited to 46% of the total subsistence [sic] allowance. (ie: When employee does not incur lodging cost generated by a Hotel, Motel, etc.) (The 46% is the same as for food and miscellaneous expense on regular per diem.)"

Since the maximum rate for Houston at the time of Mr. Bayne's travel was \$50 per day, the agency disallowed all amounts exceeding 46 percent of \$50, that is, amounts over \$23 per day. The agency advises that this policy was issued because of a recurring problem the agency has experienced with travelers who incur no commercial lodging expenses, but then submit claims for high meal costs.

Mr. Bayne contests the disallowance of the amounts claimed. He argues that "actual expenses" means just that and, as long as the amount is below the \$50 limit, it should be allowed. He states that if an employee stayed in a \$50 per night hotel the Government would pay for it and the employee would have to pay for meals out of his own pocket. Similarly, Mr. Bayne believes that if an employee spent \$50 on food the Government should pay for it, but the employee would then have to pay for his own hotel. Thus, Mr. Bayne believes the agency policy is erroneous and seeks a ruling as to the agency's authority to issue such a policy.

The authority for payment of actual expenses in lieu of per diem is found in 5 U.S.C. § 5702(c), which at the time of Mr. Bayne's travel provided as follows:

"(c) Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$50 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title."

Mr. Bayne is not correct in his belief that an employee is entitled to be reimbursed for meals up to the maximum rate. We have held that employees are entitled to be reimbursed only for reasonable expenses for meals since travelers are required to act prudently in incurring expenses while on official business. Charles J. Frisch, B-186740, March 15, 1977. The employing agency is responsible in the first instance for determining what constitutes reasonable expenses for meals in each case, and, where it has exercised that responsibility, we will not substitute our judgment for that of the agency unless the agency's determination is clearly erroneous, arbitrary, or capricious. Norma J. Kephart, B-186078, October 12, 1976. Reimbursement for actual subsistence expenses in high rate areas is intended to compensate the traveler for the higher expenses usually incurred while traveling in large metropolitan areas, not to allow an employee who saves in one area (e.g., lodgings) to claim additional expenditures in another area (e.g., meals). Kephart, supra.

In Kephart, we also suggested that agencies should consider issuing written guidelines, under the authority of paragraph 1-8.3b of the Federal Travel Regulations, to serve as a basis for review of an employee's expenses. We said that such guidelines could provide advance guidance to employees who are able to obtain lodgings at substantial savings. This is essentially what the Department of Energy has done in the present case.

Moreover, we do not think it was unreasonable to establish guidelines alerting employees to the fact that the maximum amount considered reasonable for meals and miscellaneous expenses is 46 percent of the statutory maximum. See, Frisch, supra, and Micheline Motter and Linn Huskey, B-197621 and B-197622, February 26, 1981, where, after a determination that the amount claimed for meals was clearly excessive, the agency allowed only \$18.28 for meals, or 46 percent of the \$40 maximum.

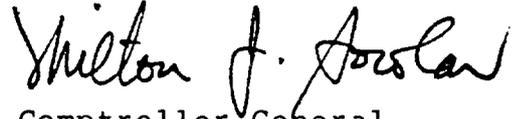
However, such a guideline may not operate as an absolute bar to payment of additional amounts when the additional amounts can be adequately justified as reasonable because of the unusual circumstances involved. Since the statute, 5 U.S.C. § 5702(c), states that employees may be reimbursed for actual and necessary expenses, payment of an additional amount should be permitted when justified by unusual circumstances.

Hence, in this case, it is clear that the Department of Energy had authority to issue the memorandum dated March 27, 1980, imposing a limit of 46 percent of the statutory maximum on meals and miscellaneous expenses. However, the policy should be revised to reflect the fact that while payment will normally be limited to 46 percent of the statutory maximum, amounts in excess of that figure may be paid if adequate justification based on unusual circumstances is submitted by the employee.

In Mr. Bayne's case, no additional justification has been offered to provide a basis for payment of the additional amounts. Accordingly, absent further justification for the additional amounts, the agency's denial of

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Mr. Bayne's claim for the additional amounts spent for meals is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States